IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2031 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

G.D. Talreja for the appellants.

S.C. Naidu with Mr. Vaibhav Dalvi i/by. M/s. C.R. Naidu & Co. for respondents.

CORAM: S.B. DESHMUKH, J.
DATE : AUGUST 29, 2006.

P.C. :

1. Heard the learned counsel for respective parties.

2. The respondent had filed an application before the Learned Commissioner for Workmen's Compensation alleging that she has been contracted by occupational disease. According to her she was working with the appellants, as Laboratory Technical Assistant since

December 9, 1983. The place of work, undisputedly of the respondent, was the Laboratory maintained by the appellants. According to respondent, symptoms of Systemic Lupus Erythematosis (T.B.) (hereinafter referred to as ‘SLE’ for short) was first diagnosed in the year 1990. She was referred, initially to Jaslok Hospital by the applicant (hereinafter referred to as ‘Employer’ for short) and thereafter to Hinduja Hospital.

3. The contention raised on behalf of the respondent is that, she has suffered SLE on account of nature of work and during the course of employment. On behalf of the respondent, two witnesses were examined, one Dr. Dastoor and applicant herself. On behalf of the employer four witnesses were

examined.

4. The learned Commissioner for Workmen's Compensation framed three issues and on consideration of the oral as well as documentary evidence allowed the application partly directing the employer to make the payment of compensation, as stated in the order. It is this order which is challenged by filing this appeal in this court.

5. I have heard the learned counsel for the parties. Learned counsel appearing for respondent, submits, that no substantial question of law, within the meaning of sub-section 2 of Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923' for the sake of brevity) is involved in this appeal. According

to him, the fact of contraction of SLE on account of nature of work and during the course of employment by the original applicant is the question of fact decided by the Learned Commissioner for Workmen's Compensation in accordance with the oral as well as documentary evidence laid on behalf of the parties. The learned counsel for the appellant, referred to Ground Nos. 1(a) to 1(f). According to him, these are the grounds involving substantial questions of law in this appeal. He also relies upon the judgment of the apex court in the matter of Chunnilal V. Mehta and Sons Ltd vs. Century, Spinning and Manufacturing Co.Ltd reported in AIR 1962 S.C. 1314.

6. The learned Commissioner for Workmen's Compensation has referred to the oral evidence laid on behalf

of the parties. The learned Commissioner has also referred to the allegations made by the applicant as well as opponent . The learned Commissioner in paragraphs 8, 9 and 10 referred the evidence of the witness. In paragraph no.11, the learned Commissioner, has observed that the disease SLE is not at all mentioned in the aforesaid schedule. With the assistance of the learned counsel for the appellant and respondent, I have considered the Schedule-III of the Act of 1923. According to the learned counsel for the appellant, the SLE is not referred to, in this Schedule-III and therefore it cannot be said to be occupational disease, suffered by the respondent, on account of nature of work, and during the course of employment. The learned counsel for respondent, further, has referred to

occupational disease under the caption "Poisoning by Nitrous Fumes". He has also invited my attention to Coloumn-II under the caption " employment" of Schedule III. According to him, any process involving exposure to Nitrous Fumes, is relevant for such occupational disease. According to him, no disease specifically is being referred in this Schedule-III Part-A. The Learned Commissioner or the court, has to correlate the entry, in relation to pleadings, facts and evidence in each case.

7. Having heard the learned counsel for the parties, in my view, a substantial question of law is involved in this appeal, as formulated in Ground No.1(a), which is reproduced herein below.

1(a) Whether Systemic Lupus Erythematosis (SLE) TB is an occupational disease allegedly contracted by the Respondent arising out of and in the course of employment as specified in part A of the Schedule III to the Workmen’s Compensation Act, 1923 ?

8. Admit on the above noted substantial question of law.

9. Call for Record and Proceedings.

10. Printing of paper-book is dispensed with. Considering the nature of controversy, expeditious hearing of the appeal is directed.

Liberty in favour of the parties to move this court for early hearing.

sd/-
(JUDGE)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3690 OF 2006

IN

FIRST APPEAL NO. 2031 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders
	G.D. Talreja for the appellants. S.C. Naidu with Mr. Vaibhav Dalvi i/by. M/s. C.R. Naidu & Co. for respondents.

CORAM: S.B. DESHMUKH, J.

DATE : AUGUST 29, 2006.

P.C . :

1. Heard the learned counsel for the parties.

2. The learned counsel for the applicant/employer submits, that an amount of Rs.1,39,114/- is deposited with the learned Commissioner for Workmen's Compensation by the appellant. He therefore seeks stay to the disbursement of the said amount as well as to the order passed by the Learned Commissioner impugned in this appeal.

3. The learned counsel for the respondent, seeks permission to withdraw the amount of compensation.'

4. Undisputedly the respondent/workmen is not in

employment with the appellant. According to the learned counsel for the respondent, it is not possible for the respondent to furnish surety of entire amount of Rs.1,39,114/-. The learned counsel for the appellant, submits, that in case this appeal filed by the appellant is allowed, it would be difficult for the applicant to recover the amount of compensation, if permitted to be withdrawn by the respondent without surety.

5. Having considered the submissions of the learned counsel and the facts and circumstances, in my view, Respondent Workmen can be

permitted to withdraw an amount of Rs.70,000/- (Rs. Seventy Thousand Only) without any surety/security. However, Workmen shall file undertaking with this court within a period of six weeks in usual form. Remaining amount of Rs.69,114/- can be withdrawn by the respondent/workment by furnishing two sureties, to the satisfaction of the Learned Commissioner for Workmen's Compensation. The said sureties to be furnished within a period of 8 weeks. In case of failure on the part of the respondent/workment to furnish surety for an amount of Rs.69,114/-, the learned Commissioner for Workmen's Compensation shall

invest the said amount of Rs.69,114/- with any nationalised bank initially for a period of three years and in the absence of any order from this court the said investment shall be renewed every time for two years thereafter.

6. In this Civil application, the applicant/employer is seeking stay to the judgment and award passed by the learned Commissioner in application No. (WCA) 443/c-97/94. In this view of the matter, Civil Application is partly allowed. The judgment and award passed by the Learned Commissioner in Application No. (WCA) 443/C-97/94 shall remain

stayed, and the respondent, is permitted to withdraw the amount of compensation in above terms.

7. Civil application is accordingly disposed off in above terms.

sd/-
(JUDGE)